

**(1991) 04 OHC CK 0026**

**In the Orissa High Court**

**Case No :** Original Jurisdiction Case No. 747 of 1980

Laxmi Dibya (since dead) and after her Smt. Suvasin  
Mohapatra

**APPELLANT**

**Vs**

Sridhar Suar and Others

**RESPONDENT**

**Date of Decision :** 26-04-1991

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Orissa Estates Abolition Act, 1951 — Section 6, 7, 8

**Citation :** (1991) 2 OLR 12

**Hon'ble Judges :** S.K. Mohanty, J; P.C. Misra, J

**Bench :** Division Bench

**Advocate :** R.K. Mohapatra, U.C. Panda, B. Routray, K.B. Kar and S.S. Das, for the Appellant; Addl. Standing Counsel and P.K. Mishra, L. Mohapatra, S.K. Das, S.B. Jena, Ashok Mukherjee and Susanta Dash, for the Respondent

**Final Decision :** Allowed

## **Judgement**

P.C. Misra, J.—The petitioner in this case has prayed to quash the revisional order passed by the Collector. Puri in O. E. A. Lease Revision No. 2 of 1979 (Annexure-5) and also for a direction to the Tahasildar, Puri to dispose of the dispute afresh as par the directions given by the Sub- Divisional Officer, Puri in O. E. A. Appeal No. 4 of 1976 (Annexure-4).

After stating the facts and contentions of the parties, His Lordship found as follows :

6. The petitioner claims that Mahania Gadadhar Ramanuja Das of Emar Math obtained a decree in the mortgaged Suit No. 244 of 1912 against Chakhi Suar, the grand-father of the opp parties and that he purchased the disputed plots in court sale. These facts have not been disputed. All that has been disputed in the counter affidavit filed by the opp. parties is that no document has been produced to show that delivery of possession was effected pursuant to the court sale. Even then we are of the view that the title to the property wo"uld pass on to the

purchaser in A court sale irrespective of taking delivery of possession. Thus, it is not correct to say as contended by the learned counsel for the opp. parties that the decree-holder-purchaser in court sale did not acquire any valid title to the disputed property in the absence of proof of delivery of possession. A further point has also been urged during the course of argument by the learned counsel for the opp. parties that the properties appertaining to khata No. 400 stood recorded in the name of Lokanath Suar, but he having not been impleaded in the mortgage suit, his interest on the property could not be affected by virtue of the mortgage decree and the court sale. Such a case had never been placed for consideration before any of the authorities and we, therefore, refrain from entertaining the same at this stage. Even in the counter affidavits filed in this case, a bare denial of the status of the petitioner has been made by saying that the opp. parties do not admit any intermediary status claimed by the petitioner. The denial of such status is based on the allegation that Mahant Gadadhar Ramanuja Das had never obtained delivery of possession of the said property at any time through court sale. On the other hand, the petitioner has filed the copy of the sale certificate, vide Annexure-9/1, copy of the deed of gift, of the year 1931 (Annexure-9/2), certified copy of the "D" Register mutating the name of Hrushikesh Das for showing that not only Mabant Gadadhar Ramanuja Das had purchased the suit properties in the court sale, and thereby acquired title to the property, but also he had transferred the said properties to Hrushikesh Das by way of gift and the said donee got his name mutated in the relevant records In this back-ground, the case now- made out by the opp. parties for the first time, is not acceptable. In the result, the questions which arise for consideration in this case must be examined on the basis that Hrushikesh Das had acquired title to the disputed properties and thus held the same as intermediary in the above mentioned proces It, therefore, follows that the family members of opp. parties were not the intermediaries at the time of vesting.

7. Admittedly an application under Secs 6 and 7 of the Act was filed by Hrushikesh Das praying for settlement of land in his favour. The lower Court records were produced before us which show that the said application in form "Ja" which is dated 8 11-1963 was filed before the Collector under the Estates Abolition Act. On 6-6-1964 an order was passed by the Estates Abolition Collector directing to register a case and to put up the matter on 8-6-1964. On 8-6-1964 the following order was recorded by the Estates Abolition Collector :

"8-6-64. Case registered. Issue proclamation inviting public objection and put up after three months from the date of publication. Ask the R. I. to make enquiry and report.

Sd/- Collector under OEA Act."

The next order in the order-sheet purported to have been passed by the Addl. Tahasildar does not bear any date. The next of the order is to the following effect:

"S. R. back. Affidavit not yet received. Ask the claimant to appear in the Court

with documents and affidavit for hearing on 24-8-1966.

Sd/- Addl. Tr."

The order dated 24-8-1966 reads as follows :

"Notice could not be served due to insufficient address. The case is therefore rejected.

Sd/- 24-8-1966."

In view of the order passed on 8-6-1964 directing issue of proclamation inviting public objection and to put up the case after three months from the date of publication of such proclamation it is not understood as to why the order sheet is silent regarding the follow up actions taken. Neither the order-sheet nor the records of the case indicate as to whether or not any proclamation was at all issued as directed and what was the date of publication of such proclamation. It is also not known as to whether the R. I. held any enquiry and submit a report as was required by the said order dated 8-6-1964. As already stated, the next order does not bear any date. It does not make any reference to the proclamation inviting public objection nor about the enquiry and report which the R. I. was required to make and submit. The following and the last order passed in the case is Dated 24-8-1966 which records that notice could not be served on the petitioner due to insufficient address. If that be so, there was no justification for rejection of the case without making further efforts for service of notice on the petitioner. The petitioner could not have any knowledge if the case being posted to 24-8-1966 in the absence of notice to him. The states Abolition Collector has thoroughly misconceived the scope of the proceeding under Sections 6 and 7 of the Act. The order passed by him clearly establishes that he has failed to exercise jurisdiction vested in him by law. A plain reading of Sections 6 and 7 of the Act would indicate that all homesteads comprised in an estate and all the lands used for agricultural or Particular purposes or other purposes enumerated in the Section shall notwithstanding anything contained in the Act be deemed to have been settled by the State Government with the intermediary provided the intermediary was in khas possession thereof on the date of vesting. Section 8-A of the Act requires the intermediary to file his claim in the prescribed manner for settlement of fair and equitable rent in respect of lands and "building which are deemed to be settled with him u/s 6 or 7 of the Act. Sub-section (3) of the said section provides that on the failure of filing the claims within the period specified under this Section the provisions of Clause (h) of Section 5 shall, notwithstanding anything to the contrary in Sections 7 and 8, apply as if the right to possession of the lands or buildings or structures, as the case may be, had vested in the State Government by the operation of this Act and thereupon the right to make any such claim as aforesaid shall stand extinguished. Thus if an application under Sub-section (1) of Section 8-A has been filed by the intermediary in the prescribed manner within the time specified in the said section, the deemed settlement as contemplated under Secs. 6 and 7 shall

operate provided the intermediary s found to be in possession of the lands or building comprised in the estate :overed by the vesting notification. After an application under Sub-section (1) is filed and proclamation inviting public objection is made, any person disputing the claim as to the status or possession of such lands or buildings or structures by the applicant my file an objection before the Collector within three months from the date of the public notice in which event the Collector shall, prior to the determination of rent under Sections 6,7 and 8 enquire into the matter in the manner prescribed and pass such orders as he deems just and proper. In the present case there is no evidence that public notice was given as-required under the proviso to Sub-section (2) of Section 8-A. The next order being undated, it is not possible for tins Court to know when the order fixing the date of hearing to 24-8-1966 was passed. At any rate, no objection appears to have been filed pursuant to the public notice if at all published. In the absence of any objection to the claim of the intermediary that he was in possession of the estate on the date of vesting, there was probably no justification for the Estates Abolition Collector to require the petitioner to appear with documents and affidavits as he did in the undated order. The Revenue Inspector was asked to make enquiry and report evidently as to whether the claimant was the intermediary and if he was in possession of the estate on the date of vesting. The order-sheet is silent as to whether any enquiry was made or any report, was submitted by the Revenue Inspector as directed. The case was rejected as notice could not be served on the claimant due to insufficient address. From the subsequent proceedings taken in respect of the disputed land it appears that the address of the widow of the applicant was the same as was given by Hrushikesh and, therefore, it is not understood as to how the address given of the applicant was insufficient. If the applicant could not be found in the address given in the application, efforts should have been made by the Estates Abolition Collector to serve the notice on him after ascertaining the correct address which the Revenue Inspector could have enquired and supplied. The manner in which the proceeding under Secs. 6 and 7 is generally dealt with by the Estates Abolition Collector and has also been dealt with in this case, it is impossible for any applicant to keep track of the case. The application in form "a" is dated 8-11-1963 and after it was filed before the Estates Abolition Collector no date seal has been affixed thereto. At one place of the application somebody is purported to have signed on 11-11-1963, but the court fee stamp has been cancelled on 16-4 without , mentioning the year which in all probabilities would be in the year 1964. It was placed before the Estates Abolition Collector for the first time on 6-6-1964 when he required the case to be registered and after the registration of the case, the Estates Abolition Collector required the proclamation to be issued and to put the proclamation without fixing a particular date for the purpose. The next order being" undated, it is not known as to when the case was put up for further orders before the Estates Abolition Collector. Then it was directed to be put up on 24-8-1966 for hearing. It was, therefore, the duty of the Estates Abolition Collector to serve the notice on the petitioner, if he required any fact to be proved before assessment of rent pursuant

to the deemed settlement under Secs. 6 and 7 of the Act. In the aforesaid background, the Estates Abolition Collector could not have rejected the case and be relieved of discharging the obligations imposed by the Act. The rejection of the case was, therefore, without jurisdiction. The said application must, therefore, be deemed to be pending and not as disposed of.

8. Their Lordships of the Supreme Court in a decision reported in *Shri M.L. Sethi Vs. Shri R.P. Kapur*, have explained the concept of jurisdiction of Courts and tribunals though in a different background. The discussion is elucidative and supports our view that the rejection of the application by the Estates Abolition Collector without giving an opportunity to the petitioner and without holding an enquiry as was required by law was an order without jurisdiction.

9. Once it is held that rejection of the case filed by Hrushikesh was without jurisdiction and, therefore, a nullity in the eye of law, the question of grant of lease of the said land ignoring the claim of the ex-intermediary does not arise. As already stated, the father of opp. parties 1 and 2 "made an application before the Tahasildar to settle the disputed land in his favour on lease basis (which was registered as EAL Case No. 26/ 67) evidently pursuant to the Government Order which was issued by the Government to extend the facility to the ex-intermediaries for settlement of land in their favour by way of lease who could not take advantage of the privilege conferred upon them under Secs. 6 and 7 of the Act within the period prescribed for the purpose. The application for grant of lease by the father of opp. parties 1 and 2 could not be treated as one under the said Circular of the Government as the benefit has been extended only to the ex-intermediaries, who were entitled to settlement under Secs. 6 and 7 of the Act, but failed to do so within the prescribed period. If the intermediary right in the properties in question passed on by virtue of the court sale to the purchaser and thereafter to Hrushikesh by way of gift, the father of opp. parties 1 and 2 was not an intermediary with respect to the said property on the date of vesting. Thus, the application filed by the father of opp. parties 1 and 2 does not come within the purview of the Government Circular meant to benefit the defaulting intermediaries.

10. The next question for consideration would be as to the effect of grant of lease in favour of the father of opp. parties 1 and 2 in EAL Case No. 26/67. In the facts and circumstances of the case as discussed earlier the irresistible conclusion would be that the settlement of land under the principles contained in the aforesaid Government Order would be nullity as we have already found that the application filed u/s 8-A by Hrushikesh must be deemed to be pending without being disposed of. That apart, the grant of lease in favour of persons other than the intermediaries is not permissible under the said lease principles contained in the Government Order.

11. Learned counsel appearing for the opp. parties has relied upon two decisions of this Court reported in 1973 (2) CWR 987 (*Duryodhan Das v. The Collector of Dhenkanal and Ors.*) and 1973 (2) CWR 1031 (*Banambar Mohanty v. Revenue*

Divisional Commissioner, Central Division, Cuttack and Ors.) in support of his contention that once right of tenancy is created in favour of a person and rent is accepted by the Government, the same cannot be cancelled by any subsequent order of the Government far less by the Collector of the district who does not possess jurisdiction. The aforesaid principles have no application to the facts of this case inasmuch as it is not a case where a right of tenancy has been voidly created. A lease granted by the Government which is without jurisdiction and which ignored the statutory right of an ex-intermediary would not create any right in favour of the so-called lessee and the question of its cancellation does not arise.

12. Learned counsel for the opp. parties has also referred to the decision reported in ILR 1994 Cut 597 (Titagarh Paper Mills Company Ltd. v. State of Orissa and Ors.) which lays down that a single writ application seeking to quash two different orders passed in two different proceedings of which the petitioner was a party cannot be maintained. The contention was that the rejection of the case of Hrushikesh and the grant of lease in favour of the father of opp. parties 1 and 2 and rejection of the application filed by the present petitioner to recall the order granting lease in favour of the father of opp. parties 1 and 2 being different orders passed in different proceedings, the same are not available to be challenged in one writ application by the petitioner. This argument ignores the fact that once it is held that the rejection of the application u/s 8-A filed by Hrushikesh was without jurisdiction, the subsequent actions taken by the authorities in the matter of settlement of the land under lease principles or otherwise are automatically reduced to a nullity. It, therefore, cannot be a case where different orders are being challenged in one writ application.

13. In the result, we allow this writ application and remand the matter to the Estates Abolition Collector to dispose of the application under Section 8-A of the Act filed by Hrushikesh afresh after substituting the petitioner in his place and after issue of proclamation as is required law inviting public objection and after giving opportunity to all the parties to be heard in the matter. It is open to the opp. parties to contest the said proceeding. No costs.

S.K. Mohanty, J.

14. I agree.